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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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13 LUIS M. MEMBRENO,
14 Petitioner,
15 v.
16 WARDEN RODRIGUEZ,
17 Respondent.
18

Case No. CV 15-3556 ODW (MRW)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**

19 The Court vacates the reference of this action to the Magistrate Judge and
20 dismisses Petitioner's defective state habeas action.

21 * * *

22 Petitioner, an inmate at the state prison in Corcoran, filed a "request for
23 equitable tolling" for a state habeas action. (Docket # 1.) He does not have an
24 active habeas petition on file in this district. Indeed, his filing is apparently an
25 attempt to extend the deadline to file a future habeas petition challenging his state
26 court criminal conviction. This procedure does not comply with the rules of this
27 Court, so the Court must dismiss Petitioner's action.
28

1 Petitioner has not filed an actual habeas petition, nor has he filed any other
2 materials with this Court in connection with his case. According to the motion,
3 Petitioner is visually impaired and “unable to find a trustworthy individual to
4 assist” him in custody. Petitioner’s submission is not accompanied by any
5 information regarding his criminal case or the claims of error he wishes to assert
6 on habeas review.

7 As a result, Petitioner failed to comply with the Rules Governing Section
8 2254 Cases in the United States District Courts. Rule 2(d) expressly requires that a
9 state prisoner commence a habeas action by using a standard form prepared by the
10 Court. In our district, prisoners must complete Form CV-69. That form provides
11 the Court with basic information about the petitioner, his conviction, the prior
12 status of his case in state and federal court, and, most importantly, the federal
13 constitutional claims he wishes to pursue here.

14 A state prisoner must begin his case by filing a petition for a writ of habeas
15 corpus. Petitioner’s request for an extension to file his federal habeas petition – in
16 the absence of a properly filed petition – is inadequate and premature. If he files
17 an action after the statutory deadline, Petitioner may be entitled to request
18 equitable tolling of the limitations period.¹ However, at this stage, the Court
19 cannot extend the habeas filing period in the manner that Petitioner requests.
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24 ¹ The Court observes that a state prisoner generally has a one-year
25 period after a conviction becomes final (generally, after the conclusion of all
26 appellate proceedings) to commence an action for federal habeas review.
27 28 U.S.C. § 2244. In California, when a prisoner does not seek certiorari review of
28 a conviction in the U.S. Supreme Court, a prisoner’s conviction generally becomes
final 90 days after the state supreme court denies a petition for review. Shannon v.
Newland, 410 F.3d 1083, 1086 (9th Cir. 2005).

1 Therefore, the Court DISMISSES the action without prejudice. For
2 Petitioner's convenience, the Court directs the Clerk to send him a blank Form
3 CV-69 with a copy of this Order.²

4 IT IS SO ORDERED.



7 Dated: May 20, 2015

8 HON. OTIS D. WRIGHT II
9 UNITED STATES DISTRICT JUDGE

24 _____
25 ² Additionally, the Court does not possess sufficient evidence to
26 exercise its discretion to appoint an attorney to represent Petitioner. Chaney v.
27 Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986). The mere assertion of a vision
28 problem (unsupported by any independent evidence) is not, without considerably
more information about Petitioner's habeas claims, sufficient to show appointment
of a lawyer "is necessary to prevent due process violations" here. On that basis,
the request for an appointed lawyer is denied without prejudice. (Docket # 4.)